THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.1553 OF 2006

Date: 09.06.2006.

Between:

G.Ravinder and antoher.

.....Petitioners.

AND

The Deputy Director (Admn.), Department
of Ayush, Andhra Pradesh, Secunderabad
and three others.

.....Respondents.

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.1553 OF 2006

ORDER: **(Per Hon'ble Sri Justice M.Venkateswara Reddy)**

The petitioners, who are unsuccessful before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"), are challenging the memo No.22382/Admn.3/2005, dated 16.03.2005, issued by the 1st respondent, as illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, besides seeking setting aside of the order, dated 22.12.2005, of the Tribunal in O.A.No.1299 of 2005 on its file.

Both the petitioners as Senior Assistants and the unofficial 4th respondent as Junior Assistant are working in the Government Nizamia General Hospital, Hyderabad. The

1st petitioner was initially appointed as Junior Assistant on 14.02.1989 in the office of the 2nd respondent. His services were regularized with effect from 15.12.1989 and probation was also declared. The 2nd petitioner was also appointed as Junior Assistant in the same office on 15.01.1982. The 1st petitioner was promoted as Senior Assistant on 01.09.2004 and the 2nd petitioner on 31.10.2002. The promotions made were temporary. Unofficial

4th respondent was appointed as Shroff on 07.03.1995 in Class-IV category. He was appointed as Typist on 03.08.2001. As he did not possess the requisite qualification i.e. a pass in Telugu Typewriting, he was reverted as Shroff. It appears that the unofficial 4th respondent was appointed by transfer as Junior Assistant, to which post he claims to have become fully qualified. He also passed Accounts Test for Subordinate Officers, Part-I and claimed promotion to the post of Senior Assistant. According to the A.P. Ministerial Service Rules, one should pass the Accounts Test for Subordinate Officers, Part-I for promotion to the post of Senior Assistant. As already stated, the petitioners were given post of Senior Assistant purely by way of temporary promotion. They did not pass the requisite departmental test prescribed for promotion to the post of Senior Assistant. The 4th respondent submitted a representation, dated 05.10.2004, to the authorities to consider his case for promotion by reverting the unqualified persons and that prompted the Government to issue the impugned memo, dated 16.03.2005, which reads as under:

> "The attention of the Superintendent, Government Nizamia General Hospital, Hyderabad, is invited to references cited. He is instructed to take necessary action for the reversion of the unqualified Junior Assistants who were promoted as Senior Assistants and take action for the promotion of the qualified Junior Assistants to the post of Senior Assistant.
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> Further he is also directed to furnish the compliance report to this office immediately as the same has to be sent to Government as per reference 2nd cited.
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> This order has got the approval of the Commissioner, Department of Ayush, A.P., Secunderabad."

It is questioning the said memo, dated 16.03.2005, the petitioners knocked at the doors of the Tribunal in O.A.No.1299 of 2005, which ended in dismissal. Immediately after disposal of the said O.A., they approached this Court and obtained interim directions to continue them as Senior Assistants in the office of the 2nd respondent till the disposal of the writ petition.

The reasoning given by the Tribunal in dismissing the O.A. is that the impugned memo is only an internal correspondence between the 1st and 2nd respondents and therefore, the O.A. is not maintainable.

The learned counsel for the petitioners contends that no notice or opportunity is given to the petitioners. It is also grievance of the petitioners that the 4th respondent is not eligible and qualified for promotion to the post of Senior Assistant. Another contention is that the memo, dated 16.03.2005 is having a bearing on the petitioners as they are alone working in the office of the 2nd respondent.

We do not see any force in these contentions. As per the impugned memo, the 2nd respondent has been instructed to take necessary action for the reversion of the unqualified Junior Assistants who were promoted as Senior Assistants and take action for the promotion of the qualified Junior Assistants to the post of Senior Assistant. As already noted, the petitioners have not passed the departmental tests required for promotion to Senior Assistant Post.

Promotion given to them, without passing qualified test, to meet the exigencies of administration is altogether a different aspect. When qualified candidates are available, the petitioners cannot expect their continuation till they pass the examination. Moreover, no decision has yet been taken by the 2nd respondent on the impugned memo, dated 16.03.2005. Even before a decision is taken, by way of pre-emptive action, the petitioners approached the Tribunal and having failed there, they approached this Court and thus, they stalled the action to be taken in pursuance of the impugned proceedings of the Government of Andhra Pradesh. The sole object of the writ petitioners appears to be to hold on to the Senior Assistant posts without passing the requisite departmental test and to deprive the 4th respondent staking his claim for promotion as Senior Assistant. We do not see *bona fides* on the part of the petitioners. That apart, no legal injury is suffered by the petitioners, since no action has been taken in pursuance of the impugned proceedings. In other words, the petitioners have not suffered any legal grievance. They are not affected by any order or decision taken by the 2nd respondent. Thus, the writ petition is also premature. Accordingly, we hold that the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed with costs.

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J.CHELAMESWAR,J

Date:09.06.2006.

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M.VENKATESWARA REDDY,J.

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